Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1997

THIRL CHAVIS,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

THIRL CHAVIS, PRO SE
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10 PP

QUESTIONS PRESENTED

I.

WHEN THE LANGUAGE IS CONCLUSIVE IN A CONGRESSIONAL STATUTE, IS IT WITHIN THE AUTHORITY OF A FEDERAL COURT TO ALTER, AND/OR REFUSE TO ADHERE TO THE LANGUAGE SET FORTH BY CONGRESS WITHOUT THE EXPRESSED AUTHORITY AND/OR CONSENT OF CONGRESS MOREOVER, SINCE ACTIONS AND CONCLUSIONS REACHED BELOW ARE IN DIRECT CONFLICT WITH THE LANGUAGE SET FORTH IN AN ENACTED STATUTE.

II.

IS IT PERMISSIBLE FOR A COURT OF APPEALS TO TAKE CERTAIN ASSERTIONS AS PROVEN FACTS WHICH WERE DERIVED FROM OR THE END RESULT OF QUESTIONABLE OR CONTESTED FACTS MOREOVER, SINCE THE CASE FILES AND RECORD DEMONSTRATE THE DISPUTED FACTS CRUCIAL TO THE OUTCOME WHICH INCLUDES GENUINE ISSUES OF FACT IN DISPUTE ALONG WITH QUESTIONS OF LAW WHICH IN ALL THINGS REQUIRED A HEARING?

III.

MAY A COURT OF APPEALS MANIFESTLY MAKE FINDINGS AGAINST THE WEIGHT OF THE EVIDENCE MOREOVER, MAKE A CONCLUSION CONTRARY TO AN ENACTED STATUTE BY CONGRESS WITHOUT THE EXPRESSED PERMISSION OR CONSENT OF CONGRESS AND ALSO CONTRARY TO DECISIONS SET FORTH BY THIS COURT WHICH IS FURTHER INDICATIVE OF A CLEAR MANIFEST OF INJUSTICE ON THE RIGHTS

OFFERED PETITIONER BY THE CONSTITUTION OF THE UNITED STATES?

IV.

DID THE SEVENTH CIRCUIT ERR WHEN IT WAVERED FROM ITS LONG ESTABLISHED POLICY RELATIVE TO SPECIFIC REASONING ON RULINGS FOR THE PURPOSE OF APPELLATE REVIEW THEREFORE OFFENDING PETITIONER'S DUE PROCESS?

V.

DID THE SEVENTH CIRCUIT ERR BASING ITS CONCLUSION THAT PETITIONER HAD NOT MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT MOREOVER, SINCE ITS CONCLUSION WAS BASED ON QUESTIONABLE OR CONTESTED FACTS OF MATERIAL VALUE IN DISPUTE?

PARTIES TO THE PROCEEDINGS BELOW

The only parties to the proceedings in the United States Court of Appeals for the Seventh Circuit were the United States of America and Petitioner Thirl Chavis.

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I.

OPINION AND JUDGMENT BELOW

The opinion below is unpublished. A copy is included in the Appendix hereto as App. 1

II.

JURISDICTION

This Court has jurisdiction to entertain Petitioner's Petition for a Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

The United States Court of Appeals for the Seventh Circuit entered its final judgment July 30, 1998. This Petition is being filed with the Court timely of the entry of Seventh Circuit's final judgment.

III.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

* * *

Statutory Construction. Interpretation of a federal statute by courts of appeal and the Supreme Court has long been established that the review is de novo. In various cases in the past, the Supreme Court has stated in part that its inquiry relative to interpretation of a federal statute begins with the language of the statute, which must ordinarily be regarded as conclusive and, that the strong presumption that the plain language of the statute expresses congressional intent is rebutted only in rare and exceptional circumstances, when a contrary legislative intent is clearly expressed. The Supreme Court went on and stated that in the absence of that rare and exceptional circumstance, we are to take Congress at its word. In the course of its decision, the Supreme Court wrote, Courts cannot with ease presume ratification of that which Congress forbids. **18 U.S.C. § 201(c)(2)** could not be more clear. It says:
Whoever...directly or indirectly, gives, offers or promises anything of value to

any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court...authorized by the laws of the United States to hear evidence or take testimony... shall be fined under this title or imprisoned for not more than two years, or both. The class of persons who can violate the statute is not limited. Whoever completes the following elements commits a crime. 18 U.S.C. § 201(c)(2). First, the statute requires a gift, offer, or promise, either direct or indirect, to a person. Second, the gift, offer, or promise must be of value. Third, the gift, offer or promise must be made for or because of the person's sworn testimony at a trial or other proceeding before an authorized court. The state of mind required to violate the statute is knowledge that the thing of value is given for or because of testimony. Even if § 201 (c)(2) could be said to deprive the sovereign of an established prerogative, two further exceptions remove § 201 (c)(2) from this class status. First, the presumption that the excluded unless named does not apply where the operation of law is upon the agents or servants of the government rather than on the sovereign itself. Id. The Supreme Court held in one of its decisions that, § 201 (c)(2) does not restrict any interest of the sovereign itself; it operates only upon an agent of the sovereign limiting the way in which that agent carries out the government's interest. There is no presumption that regulatory and disciplinary measures do not extend to such officers. Taken at face value the

language the purpose of Congress to govern conduct of its own officers and employees as well as that of others. Second exception provides that the government is subject to a statute, even if it infringes upon a recognized government prerogative, if the statute's purpose is to prevent fraud, injury, or wrong. The antigratuity provision of § 201 (c)(2) indicates Congress's belief that justice is undermined by giving, or promising anything of value for testimony. If justice perverted when a criminal defendant seeks to buy testimony from a witness, it is no less perverted when the government does so. Because § 201 (c)(2) addresses what Congress perceived to be a wrong, and operates to prevent a fraud upon the federal courts in the form of inherently unreliable testimony, the proscription of § 201 (c)(2) must apply to the government. Further, the interests of the government as sovereign militate in favor of applying § 201 (c)(2) against federal prosecutors. The interest are in the enforcement of its laws and the just administration of its judicial system applying § 201 (c)(2) to all parties in the judicial system advances both interest. The policy expressed in § 201 § (c)(2) has long been enforced at common law. The policy is weighty enough that contracts to pay fact witnesses are void as violative of public policy.

* * *

Perjury Generally. Whoever - (1) having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an

oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true or (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of Title 28 U.S.C. willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury. (This section is applicable whether the statement or subscription is made within or without the United States). **Fed R.Crim.P.Ann. § 1621**.

* * *

Misrepresentation Generally. An untrue statement of fact. That which, if accepted leads the mind to an apprehension of a condition other and different from that which exists. Colloquially it is understood to mean a statement made to deceive or mislead. **Black's Law Dictionary - Fifth Edition**.

* * *

de novo review. District court's dismissal of a federal prisoner's habeas corpus petition is reviewed de novo. **28 U.S.C. § 2255**.

* * *

Due Process. No person shall be deprived of life, liberty, or property without due process of law. **Constitution of the United States of America, Amendment V**.

* * *

Findings and Conclusions. Findings of fact and conclusions of law are **"indispensable to appellate review"**. **28 U.S.C. § 2255.** A rather terse statement will not suffice. **Id.**

* * *

AMENDMENT VI - INEFFECTIVE ASSISTANCE

To establish or demonstrate ineffective assistance of counsel, habeas corpus Petitioner would have to show that counsel's performance was "deficient" and "that deficient performance prejudiced defense". **Constitution of the United States of America, Amendment VI.**

* * *

Determining The Incorporation of The Jencks Act

After a witness other than the defendant has testified on direct examination, the court on motion of a party who did not call the witness, shall order the attorney for the government or the defense and the defendant's attorney...to produce for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified. **Fed.R.Crim.P. Rule 26.2 (a); Fed.R.Crim.P. Rule 26.2(f)(3)** expressly defines the "Statement" of a witness to include a statement made by a witness to a grand jury. **18 U.S.C. § 3500(e)(3)** "entitles a defendant to the grand jury testimony of a government trial witness without any preliminary inspection for

usefulness" by trial judge. **2 Charles A. Wright and Arthur R. Miller, Fed.Practice and Procedure § 436-38(1982 & Supp. 1995).**

* * *

BRADY V. MARYLAND UNDER AMENDMENT V - DUE PROCESS

The meaning of materiality is that a reviewing court must focus on the fairness of the trial the defendant actually received rather than on whether a different result would have occured had the undisclosed evidence been revealed. **Constitution of the United States of America, Amendment V.**

IV.

STATEMENT OF THE CASE[1]

Pursuant to a four(4) count Superseding Indictment which was returned in the United States District Court for the Southern District of Indiana, Indianapolis Division on March 24, 1993, and in further -ance of Petitioner Thirl Chavis's plea of

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[1] The jurisdiction of the court below was invoked pursuant to 28 U.S.C. § 1291.

not guilty, Petitioner went to trial by jury to the charges alleged in the Indictment which were some 47 months from the date the alleged offenses occured and the date of the Indictment. The jury found Petitioner guilty on all four counts in the Indictment. Relative to Petitioner's conviction, Petitioner's counsel did the the following: **(1)** filed a timely notice of appeal; **(2)** filed a motion to dismiss appeal pursuant to his advice to Petitioner to file a § 2255. The facts on Petitioner's § 2255 are set forth in the order of the U.S. Court of Appeals for the Seventh Circuit dated September 17, 1997. **App. 10.** It is also stated in the lower court's order that Petitioner was under the district court's invitation to reinstate or commence a new action pursuant to § 2255, when Petitioner had satisfactorily

completed his investigation. In furtherance of the district court's order for the refiling or filing a new cause of action, **App. 10** Petitioner filed his § 2255. The district court denied it and Petitioner; **(1)** filed notice of appeal, **Id.** **(2)** court below remanded for further proceedings, **Id.** **(3)** district court ordered government to file an answer, **App. 34, (4)** government responded, Petitioner replied and district court denied with prejudice. **App. 30-33.** **(5)** Petitioner filed for Certificate of Appealability ("COA") **App. 25-29, (6)** district court denied. **App. 23-24.** Petitioner pled in the alternative, district clerk submitted the record to the court below **App. 20-22, (7)** Petitioner filed his docketing statement **App. 13-18, (8)** court below ordered appellee to file jurisdictional Memorandum **App. 12,** Appellee com-

plied **App. 6-9,** Petitioner responded **App. 2-5,** the court below in its rather terse statement denied Petitioner. **App. 1.**

REASONS FOR GRANTING THE WRIT

This case exemplifies **direct conflict to that of statute law as well as to previous decisions made by this Court relat- to the statutes set forth herein below.**

Facts Pertinent To The 18 U.S.C. § 201(c) (2) Issue:

In view of the fact Petitioner pled not guilty to the four counts in the indictment **App. 45, 46,** the evidence comprised during trial clearly demonstrates, there are several problems here of Constitutional magnitude which could have been in all things cured had the court below **(1)** reviewed the case at bar de novo as required **(2)** referenced the documents, papers and record in the case at bar. The clear

problems which exists are, but not limited to:

1. Pursuant to Petitioner's request for the court below to review the record de novo in furtherance of Petitioner's COA appeal, the record is devoid of such review undertaken by the court below. Had a de novo review been made, the following would have been found by the court below;

2. Relative to promises in consideration of anything of value in exchange for witness's sworn testimony, government agents, i.e. U.S. Attorneys and/or their assistants are governed by **18 U.S.C. § 201 (c)(2).** Further **§ 201 (c)(2) prohibits and condemns promises made pursuant to consideration of anything of value in exchange for witness's sworn testimony.**

3. Petitioner argued vigorously the leniency promised and granted to the

government witnesses in exchange for their sworn testimony, as stated above is in all things prohibited by 18 U.S.C. § 201(c)(2) which violated Petitioner's due process to a fair trial. In its wisdom, this Court established and set forth the following;

> **Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means--to declare that the government may commit crimes in order to secure the conviction of a private criminal--would bring terrible retribution. Agents that pernicious doctrine this Court should resolutely set its face. 277 U.S. 438, 485 (1928).**

Some 50 years later the Court stated:

> **This venerable principal will not give way to the expediency of the govern-**

ment's present practices without legislative authorization. 457 U.S. 332, 352 (1982).

4. The evidence in the case at bar is overwhelming in furtherance of prohibition and condemnation of promises made pursuant to anything of value in exchange for witness's sworn testimony moreover, the plea agreement and the complete understanding therein in regards to the witness procuring the valuable cut in sentence in exchange for her sworn testimony. Considering federal government agent Tom Casey's pick and choose prosecution between the state of Indiana and federal, Casey demonstrated while on the stand in the case at bar how his promises and payment in exchange for the government witness's testimony clearly was something of value **[App. 59];[Vol.I Trial Transcript page 28, lines 15-17]; [Vol. I Trial Transcript page 29, lines 1-**

5]. Government agent Casey's inducement for government witness Siakotos to testify is clearly exhibited in **Vol. I Trial Transcript page 70, lines 13-25; Vol. I Trial Transcript page 71, lines 1-3.** Further, the two crucial events which occurred in the course of the improprieties on the part of the prosecutor and agent Casey which were not addressed by the lower court which was caused by the failure to review the case at bar de novo or reference the record were: **(1)** allegations set forth in the Indictment were in or around April, 1989 to July, 1989. **(2)** government witness Siakotos testified she was not sentenced until early 1991 and her sentence was only six years pursuant to the plea agreement herein discussed. It is in all things clear that, Agent Casey took 2 years to muster the offer and promise to

government witness Siakotos in exchange for her false sworn testimony which in all things Petitioner pointed out in detail in the district court but, instead of referencing the record or reviewing the case at bar de novo as required, the court below merely rendered its rather terse statement. In furtherance of the above, the Fifth Circuit in its wisdom stated in part: "We think it obvious that promise of immunity or leniency premised on cooperation in a particular case may provide a strong inducement to falsify in that case." 719 F.2d 1253-57 (5th Cir. 1983). The case at bar is classic that was found in the Fifth Circuit's wisdom of some 15 years ago. In the case at bar, two factors demonstrate how Petitioner's conviction was obtained illegally. (1) When Special Agent Casey went to the place of confinement of government witness Siakotos and promised her

leniency in her State sentence in exchange for her sworn testimony in the case at bar. Even though it was some forty seven (47) months subsequent to the alleged offenses, and the fact it took S/A Casey that long to reach the agreement with Siakotos that involved the promise of leniency and, for Siakotos to trust such arrangement. Further, Siakotos had to join forces with S/A Casey for the fabrication of her testimony. (2) The record speaks out loudly on the perjured testimony that Siakotos proffered in court. The record demonstrates how Petitioner's conviction was obtained illegally moreover, in direct conflict with statutory law. 18 U.S.C. section 201 (c)(2). This Court at various times has in all things emphasised, ''The intention of Congress and the language in a Statute'' ''must ordinarily be regarded as conclusive. 447 U.S. 102, 108. Further,

as this Court previously concluded, ''we are bound to take Congress at its word.'' 118 S.Ct. 838, 841. Facts pertinent to 18 U.S.C. sections 201 (c)(2); and 1621 which Circuits have quoted that has long been the standing of this Court which it states in part: The class of persons who can violate the statute is not limited. ''Whoever completes the following elements commits a crime. 18 U.S.C. section 201 (c)(2). First, the statute requires a gift, offer, or promise, either direct or indirect, to a person, See id. Second, the gift, offer or promise must be 'of value'.'' Id. Third, the gift, offer, or promise must be made 'for' or 'because of' the person's sworn testimony at a trial or other proceeding before an authorized court. Id. The state of mind required to violate the statute is knowledge that the thing of value is

agents or servants of the government rather than on the sovereign itself.'' See Nardone v. United States, 302 U.S. 379, 383 (1937) at 383; United States v. Arizona, 295 U.S. 174, 184 (1935); Dollar Sav. Bank v. United States, 86 U.S. (19 Wall.) 227, 239 (1873). Taken at face value, the language indicates the purpose of Congress to govern conduct ofits own officers and employees as well as that of others. Arizona, 295 U.S. at 184 (holding the Secretary of the Interior was clearly subject to a law prohibiting ''any person'' from constructing a dam on navigable waterways without the consent of Congress). The entire language of 18 U.S.C. section 201 (c)(2)is in totality silent on the issue that Congress permitted any agent(s) of the sovereign namely any prosecutor to violate and/or to be in direct conflict with the language in section 201 (c)(2) therefore the above stated actions on the part of S/A Casey and the prosecutor violated section 201 (c)(2) moreover with the perjured testimony which was proffered by the government's chief witness during

and evidenced in the record hereto. Petitioner argues that, since the court below did not have the expressed authority or consent of Congress to do so, it could not alter any portion of the conclusive language in 18 U.S.C. section 201 (c)(2). The failure on the part of the court below to adhere to the said statute demonstrates the violation of the same statute. In furtherance of the above stated conflict and violation, the record decisively demonstrates the exact prognostication of the Fifth Circuit some fifteen years ago when it stated in part: "We think obvious that promises of immunity or leniency premised on cooperation in a particular case may provide a strong inducement to falsify in that case." 719 F.2d 1253-57 (5th Cir. 1983). In view of the decision made below and Petitioner's section 2255 was in fact

filed in accordance to the district court and its order as stated herein which was not addressed or interpreted by the court below which in essence deprived Petitioner of his due process pursuant to the actions or non-actions by the court below moreover, had the court below reviewed the record de novo as required, the miscarriage of justice which occurred in connection with the above stated conflicts would have been corrected in the normal course of a de novo review by the court below. Further, the court below would have found that, the district court's ambiguous orders App.31 and App.23 dealt with the AEDPA and in totality refused to address its own invitation to Petitioner which was a clear on going case, exempt from the AEDPA. The court below merely paraphrased the district court's final order App. 1,

which certainly appears to further the miscarriage of justice.

POINT I

In the case at bar, since the district court denied the certificate of appealability ("COA"), the notice of appeal constituted a request to have all of the issues reviewed by a judge of the court of appeals. Fed.R.App.P. Rule 22(b). In re Certificate of Appealability, 106 F.3d 1306 at 1307. Further, there seems not to be a conflict between the Seventh Circuit and the Fifth Circuit relieve to state findings and conclusions for 28 U.S.C. section 2255 for the reason that findings and conclusions "are plainly indispensable to appellate review." Hart v. United States, 565 F.2d 360, 362 yet, in the case at bar, the Seventh Circuit failed to adhere to its long standing as stated in the Hart case above cited. Since the order of

the court below App. 1 indicates the court failed to review the case at bar de novo the court below failed to address the district court's invitation for Petitioner to refile as previously stated herein therefore violating Petitioner's Due Process under the Constitution of the United States to equal protection of the law. Fifth Amendment. Further, in the process of the failure to review the case at bar de novo, by the court below, Petitioner argues that, the hard evidence he attached to his pleadings in the court below App. 59, 60, 64, 65, 66, 67, relative to the direct conflict with statute 18 U.S.C. section 201 (c)(2) by the above stated government agents which required a hearing was in furtherance of the miscarriage of justice herein stated and evidenced for the reason that it has been consistently noted that section 201

is to be broadly construed to further its legislative purpose of deterring corruption. See United States v. Hernandez, 731 F.2d 1147, 1149 (5th Cir. 1984); United States v. Evans, 572 F.2d 455, 480 (5th Cir.), cert. denied 439 U.S. 870 (1978).

This court should in the interest of justice to correct the miscarriage of justice suffered by Petitioner the decisions this court has rendered in the past. The Arizona court 295 U.S. @ 184, the Nardone court 302 U.S. @ 384, the Herron court 87 U.S. (20 Wall.) at 255-56 all of which have yet to be overturned relied on the principal to hold that federal agents were covered by the statutory term "anyone" in the 1934 federal wiretap statute. 302 U.S. @ 382-84. This holding still stands obviously since the holding has never been overturned and the conclusive

Congressional language has not been altered by Congress since its enactment therefore, the language in 18 U.S.C. section 201(c)(2) should apply to the case at bar. Further, since it has been uniformly rejected that "anything of value should be restricted to things of monetary commercial,objective, actual, or tangible value" interpretation is based upon a recognition that monetary worth in not the sole measure of value. Marmoljo, 89 F.3d 1185, 1191 (5th Cir. 1996); Williams, 705 F.2d @ 622-23; Girad, 601 F.2d @ 71; Russello, 464 U.S. 16, 21 (1983). The promised and procured leniency of sentence herein stated should in all things be broadly construed in accordance to section 201 in order to carry out its Congressional purpose. Williams @ 603. The leniency stated herein is clearly "thing of value" See

Nilsen, 967 F.2d 539, 542-43 (11th Cir. 1992) cert. denied, Schwartz, 785 F.2d 679-81 (9th Cir.) cert. denied, Pacheco, 826 F.2d 826 F.2d @ 315 (5th Cir. 1985); Kimble, 719 F.2d @ 1255-57 (5th Cir. 1983); Picquet, 963 F.2d 54, 55 (5th Cir. 1992).

The Picquet court agreed with circuits which held that the test of value is whether the recipient subjectively attaches value to the thing received. Id. @ 55. In the case at bar the thing of value was leniency of many years off of a sentence. The court below obviously is also in conflict with the circuits that held the test of value as stated above. Rulings on a promise, false testimony, threat to a witness's truthfulness are those of the Fifth Circuit noting that certiorari was denied. Pacheco, 826 F.2d @ 315; Kimble, 719 F.2d @ 1255-57. It should be concluded that the government

witness herein referenced had a strong inducement to falsify her testimony during trial in this case.

POINT II.

In reference to the district court's order App. 10-11, did the court below err when it made its findings and conclusion. The above stated district court order App. 10-11 demonstrates the ongoing litigation which could not be confused by the AEDPA's time limitations. Further, the failure on the court below to a de novo review of the record in the case at bar omitted the finding that, Petitioner's pleadings were pursuant to authority set forth by this Court moreover, (a) Ineffective assistance of counsel; (b) Jencks Act; (c) Brady Rule. In futherance of the above, Congress in H.R. Rep. No. 87-748, at 16 (1961), set forth the conclusive language that "Anything of value by 'witness' 'for' or

'because of'... testimony'' should also be prohibited.'' The committee report also indicates Congress's policy: ''The conduct which is forbidden has the appearance of evil and the capacity of serving as a cover for evil. Id. at 19. This Court for more than 60 years has expressed instructive words: ''No rule of construction...requires that a penal statute be strained and distorted in order to exclude conduct clearly intented to be within its scope.'' This Court has further expressed that in essence a matter which tends to alter the intent or conclusive language of Congress is one of policy for Congress to decide. Dixon v. United States, 465 U.S. 482, 496 (1984); See Salinas v. United States, 118 S.Ct. 469, 475 (1997)(citing United States v. Raynor, 302 U.S. 540, 552 (1938)); See Nardone, 302 U.S. at 383.

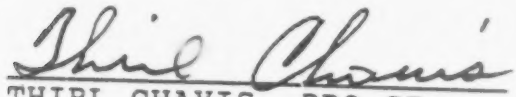
Over two decades ago the court below stated its position in conflict to 18 U.S.C. section 201 (c)(2) when it stated in part: "if the government can excuse criminal or civil liability in setting a criminal case, surely it can use that power of compromise to obtain a guilty plea ot to procure testimony in other proceedings." United States v. Barrett, 505 F.2d 1091 (7th Cir. 1974). In essence the court below in its conclusion above stated tends to imply repeal and/or amendment to section 201 (c)(2) which is clearly disfavored by this Court. See e.g. United States v. Estate of Romani, 118 S.Ct. 1478, 1486 (1998); 1A Norman J. Singer, Sutherland Statutory Construction section 22.13 (5th ed. 1992)("Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases...") Id. at section 23.09. The majority of the

section 23.09. The majority of the circuits are in conflict with the court below and its above stated conclusion. Other circuits restrict federal prosecutors to adhere to statute law. Ryan, 903 F.2d 739-40 (10th Cir.); McDonnell Douglas Corp. 132 F.2d 1257 (8th Cir. 1998); Lopez, 4 F.3d 1458-63 (9th Cir. 1993); Matter of Doe, 801 F. Supp. 484-87 (D.N.M. 1992). The case at bar is a classic miscarriage of justice pursuant to the total disregard for statutory law as stated herein.

CONCLUSION

For the foregoing reasons, Petitioner Thirl Chavis repectfully requests that the Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,



THIRL CHAVIS, PRO SE
Reg. No. 99019-012
FPC-Nellis CS 4500
North Las Vegas, NV 89036-4500

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been caused to be served upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W. Washington, DC 20530-0001 by depositing the same on this 30th day of January, 1999, in the U.S. Mail First-Class Delivery postage prepaid.

THIRL CHAVIS, PRO SE

30

APPENDIX

1. Opinion of the United States Court of Appeals for the Seventh Circuit. . .App. 1

2. Appellant's Response to Appellee's Jurisdictional Memorandum. . .App. 2 - 5

3. Jurisdictional Memorandum. . .App. 6 - 9

4. Order of the United States Court of Appeals for the Seventh Circuit. . .App. 10 - 11

5. Order of the United States Court of Appeals for the Seventh Circuit. . .App. 12

6. Appellant's Docketing Statement. . .App. 13 - 18

7. Order of the United States Court of Appeals for the Seventh Circuit. . .App. 19

8. Correspondence from the United States District Clerk-Southern District of Indiana. . .App. 20 - 22

9. Order of the United States District Court for the Southern District of Indiana. . .App. 23 - 24

10. Application/Motion for Certificate of Appealability. . . App. 25- 29

11. Order of the United States District Court for the Southern District of Indiana. . .App. 30 - 33

12. Order of the United States District Court for the Southern District of Indiana. . .App. 34 - 35

13. Order of the United States Court of Appeals for the Seventh Circuit. . .App. 36 - 37

14. Defendant's Motion Requesting Permission to Refile His 2255. . .App. 38 - 44

15. Renewal Application and/or Request under 28 U.S.C. 2244(b) for leave to file a second or successive petition. . . App. 45 - 58

16. Transcript testimony adduced during trial in case at bar. . .App. 59 - 70

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinios 60604

Submitted July 30, 1998

Decided July 30, 1998

Before

Hon. JOEL M. FLAUM, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

THIRL CHAVIS,

Petitioner-Appellant

No. 98-1237

v.

UNITED STATES OF AMERICA

Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division

IP 97-1613-C-M/F

Larry J. McKinney, *Judge.*

ORDER

Petitioner moved to vacate, correct, or set aside a

sentence pursuant to 28 U.S.C. 2255. This district court denied the motion and declined to issue a certificate of appealability. Petitioner now has filed an application for a certificate of appealability.

This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. 28 U.S.C. 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-1237

THIRL CHAVIS,)
Petitioner-Appellant)
)
v.)
)
UNITED STATES OF AMERICA)
Respondent-Appellee.)

Appeal from the United States District Court, Southern District of Indiana
Indianapolis Division
Cause No. IP97-1613-C-M/F
Hon. Larry J. McKinney, District Judge

APPELLANT'S RESPONSE TO APPELLEE'S JURISDICTIONAL MEMORANDUM

TO THE HONORABLE CIRCUIT JUDGES OF SAID COURT:

Pursuant to the Court's order dated June 23, 1998, and the Appellee's (herein also referred to as ''Government'') advise to the Court in its **''Jurisdictional Memorandum''** (''Memo'') dated June 26, 1998, Appellant respectfully sets forth the following:

COURT'S ORDER

Considering Appellant is peoceeding in Pro Se status and the fact Appellant is inartful in law, the Court's order dated June 23, 1998 is clear and certainly without ambiguity for the resaon that, the Court clearly sets forth:

1. That, Sections 105 and 106(b) of the Antiterrorism and Death Penalty Act (''ADEPA'') of 1996 prescribes requirements for **second or successive** collateral attacks on Judgments in criminal cases.

2. That, ''IT IS ORDERED that the appellee file, on or before June 29, 1998 a statement advising this court whether appellant brought a previous post-conviction motion under 28 U.S.C. section 2255 challenging the same judgment that appellant now challenges.''''If so, appellee shall provide the court with the district court docket number and a copy, if there is one of this court's order authorizing the filing of a second or successive petition or motion.''

The Court continues in its above stated order: ''If appellee takes the position that the current matter is successive, appellee shall file a copy of the district court order ruling on the earlier petition with its response.''

APPELLEE'S POSITION RELATIVE TO A SECOND OR SUCCESSIVE POST CONVICTION RELIEF MOTION

In conjunction with the above Court Order and the contents therein Appellee response is as follows:

1. ''It is not the position of the United States that the instant appeal is that of a second or successive post conviction relief motion.'' [Please see page one- ''Jurisdictional Memorandum''].

2. Appellee continues in part asserting that: ''In light of the unique procedural history of this case, however, the United States does not assert or claim that Chavis' petition is a second or successive motion.''

In light of the above, the government's position is clearly in all things demonstrated by its pleading that, Appellant's instant appeal does not fall within the rems of the ''AEDPA'' and in further consideration of the same, Appellant's ''COA'' should be granted pursuant to all issues presented and its appeal in the interest of justice should be heard.

Appellant further asserts that, all other matters brought forward by Appellee are in all things superflorous, frivulous and without meritrelative to the above stated Court order for the reason that, the Court did not order Appellee to raise any issues pertaining to time bar. Accordingly,

Appellee's argument relative to any issue outside the rem of the above stated Court order should not be considered in the interest of justice.

WHEREFORE ALL PREMISES considered Appellant prays onto the Court to grant his ''COA'' and further, consider his issues as pled in the record moreover, Appellant's offended rights under the Constitutional issues raised by Appellant in the case at bar. In the alternative, Appellant prays onto the Court of Appeals for Seventh Circuit to remand the case at bar for the purpose of expanding the record on the Constitutional violations plead by Appellant pursuant an evidentiary hearing.

Respectfully submitted,

/S/

THIRL CHAVIS,
Reg. No. 99019-012
FPC-Nellis CS 4500
N. Las Vegas,NV 89036

CERTIFICATE OF SERVICE

I hereby certify that Gerald A. Corz, Assistant U.S. Attorney was caused to be served at 46 E. Ohio St., Indianapolis, IN 46204 relative to the foregoing pleading hereto attached on this 8th day of July, 1998, by depositing the same in the U.S. Mail postage prepaid.

/S/

Thirl Chavis, Pro Se
Reg. No. 99019-012
FPC-Nellis, CS 4500
N.Las Vegas,NV 89036

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 98-1237

THIRL CHAVIS,	)
Petitioner-Appellant	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)
Respondent-Appellee.	)

Appeal from the United States District Court, Southern District of Indiana
Indianapolis Division
Cause No. IP97-1613-C-M/F
Hon. Larry J. McKinney, District Judge

JURISDICTIONAL MEMORANDUM

For its response to the Court's order dated June 23, 1998, the United States of America advises the Court as follows:

It is not the position of the United States that the instant appeal is that of a second or successive post conviction relief motion.

This case has an unusual procedural history. On April 9, 1992, the Appellant Chavis was indicted in a four count indictment handed down by the Grand Jury

sitting in the Southern District of Indiana. That indictment charged Chavis with a variety of drug related charges relating to his possession of cocaine with intent to distribute (and conspiracy to distribute) that illegal substance. A superseding indictment with respect to these charges was handed down by the Grand Jury on March 24, 1993.

Chavis was convicted, after a jury trial, of all four counts of the superseding indictment. On July 21, 1993, the district court imposed a sentence of 150 months on each count, to be served concurrently, upon Chavis.

Chavis filed a timely notice of appeal of his conviction. Instead of pursuing that direct appeal, Chavis, by his counsel, moved on January 5, 1994, to voluntarily dismiss his direct appeal. The Seventh Circuit, by an order dated January 7, 1994 ordered Chavis' appeal [No. 93-2836] dismissed pursuant to Fed.R.App.P. 42(b) and Circuit Rule 51(d).

On February 22, 1994, Chavis filed a motion for post conmviction relief pursuant to 28 U.S.C. section 2255. That motion was then voluntarily dismissed without prejudice by Chavis in January of 1995.

On June 20, 1997, Chavis submitted a new Section 2255 motion to the district court.The district court (on June 30, 1997)

dismissed this petition as successive. Chavis appealed that dismissal and the Seventh Circuit, on

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1 The case name and Seventh Circuit cause number for Chavis' direct appeal was United states v. Thirl Chavis and Karen Moutry, Nos. 93-2836 and 93-2919.

2 This dismissal was pursuant to the district court's suggestion. See Chavis v. United States, Nos. 97-3118 and 97-9092, Order dated September 17, 1997.

September 17, 1997, reversed the district court's dismissal and remanded the case for further proceedings in the district court.

Pursuant to the order of remand, the district court (by order dated September 29, 1997) directed that Chavis' motion for post conviction relief be allowed to proceed and that it be docketed as a new civilaction. The new civil cause number assigned was IP97-1613, the United States moved to dismiss Chavis' section 2255 motion on the grounds that it was time barred and additionally barred by the procedural default.

On January 6, 1998, the district court entered its judgment dismissing

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3 The Seventh Circuit, in its order of September 17, 1997, noted that Chavis petition appeared to have other non-jurisdictional defects, including being

time barred, but left those issues to the district court to resolve on remand.

4 The case number in Chais' underlying criminal conviction was IP92-59-CR-01-M/F.

Chavis' motion filed pursuant to 28 U.S.C. section 2255 as time barred. The district court did not address the issue of Chavis' procedural default.

The United States believes that Chavis' claim is both time barred and barred by his procedural default. In light of the unique procedural history of this case, however, the United States does assert or claim that Chavis' petition is a second or successive motion.

A copy of the Seventh Circuit's order dated September 17, 1997 in Nos. 97-3118 and 97-9092 is attached as an exhibit hereto.

Respectfully submitted,

JUDITH A. STEWART
UNITED STATES ATTORNEY

By: /S/

Gerald A. Coraz
Assistant United States
Attorney

CERTIFICATE OF SERVICE

The is to certify that I have served a copy of the foregoing JURISDICTIONAL MEMORANDUM, upon the Respondent-Appellee herein, by mailing a copy thereof to the following on this 26th day of June, 1998.

Thirl Chavis
Reg. No. 99019-012
Nellis Federal Prison Camp
Nellis A.F.B.- Area 2
N. Las Vegas, NV 89036-4500

/S/
Gerald A. Coraz
Assistant United States Attorney

Office of the United States Attorney
5th Floor, United States Courthouse
46 East Ohio Street
Indianapolis, Indiana 46204
Telephone: 317- 226-6333

United States Court of Appeals
For The Seventh Circuit
Chicago, Illinois 60604

Submitted July 30, 1998

Decided July 30, 1998

Before

Hon. JOEL M. FLAUM, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

THIRL CHAVIS,
Petitioner-Appellant,

No. 98-1237 v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States
District Court for the Southern
District of Indiana,
Indianapolis Division.

IP 97-1613-C-M/F

Larry J. McKinney,
Judge.

ORDER

Petitioner moved to vacate, correct or set aside a sentence pursuant to 28 U.S.C. section 2255. The district court denied the

motion and declined to issue a certificate of appealability. Petitioner now has filed an application for a certificate of appealability.

This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. 28 U.S.C. section 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

United States Court of Appeals

for the Seventh Circuit

Chicago, Illinois 60604

Decided September 17, 1997

Before

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

THIRL CHAVIS,

Petitioner-Appellant,

Nos. 97-3118 & 97-9092 *v.*

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division

No. IP 94-398-C

Larry J. McKinney, *Judge.*

ORDER

Thirl Chavis filed his initial motion under 2255 in February 1994. By order of October 11, 1994, the district court also said that if the schedule was "unmanageable" for

Chavis, "the defendant should consider seeking the dismissal of this action without prejudice...[and] thereafter seek to reinstate it or commence a new action when an investigation satisfactory to him has been completed." In response to that order, Chavis sought and in January 1995 was granted permission to dismiss his case without prejudice.

On June 20, 1997, accepting the district court's invitation, Chavis filed a motion requesting permission to "refile" his 2255 motion. Ten days later, the district court denied the motion on the ground that it was successive and therefore the district court lacked jurisdiction over the matter under our decision in *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996). Chavis responded in two ways: first, he filed an application with this court for permission to file a successive petition, which is before us in No. 97-9092 (after an initial false start), and second, he filed a notice of appeal from the district court's order dismissing his motion, which is before us in No. 97-3118.

We have concluded that, under these circumstances, Chavis qualifies for the exception we recognized in *Felder v. McVicar*, 113 F.3d 696 (7th Cir. 1997), for petitioners who "dismissed the first petition in reliance on the law that existed befire the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") and that was more liberal with regard to the filing of successive petitions for habeas corpus." *Id.* at 698 (citing *Burris v. Parke*, 95 F.3d 465 (7th Cir. 1996) (en banc).) Chavis not only moved for dismissal long before the AEDPA appeared, but he did so at the express invitation of the district court, with the assurance that a renewed filing would be accepted (and thus would not be barred under Rule 9(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts). If he had known that the price of accepting the district court's invitation to take a voluntary dismissal would be a later bar against refiling the motion, it is unlikely he would have done so. It is equally unlikely that the district court would have suggested such an option. Instead, Chavis probably would

have sought, and the district court would probably have granted, additional time for him to substantiate his claims.

We therefore deny Chavis' application in No. 97-9092 as unnecessary, reverse the district court's order finding no jurisdiction in No. 97-3118, and remand for further proceedings in that court on the motion. In that connection, we note that Chavis may have other, non-jurisdictional, problems with his 1997 motion, as it appears to have been filed beyond the one-year period provided by 2255, 6. See *Lindh v. Murphy*, 96 F.3d 856, 866 (7th Cir. 1996) (en banc), *rev'd on other grounds*, 117 S. Ct. 2059 (1997). We leave consideration of the statute of limitations question to the district court on remand.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

THIRL CHAVIS,

Petitioner-Appellant

v. USCA NO. 98-1237

UNITED STATES OF AMERICA, USDC NO. 97-C-1613

Respondent-Appellee.

APPELLANT'S DOCKETING STATEMENT

IN ACCORDANCE TO CIRCUIT RULE 3 (c) AND

IN FURTHERANCE OF CIRCUIT RULE 28 (a)

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW Thirl Chavis Petitioner/Appellant ("Appellant") in the above-entitled and numbered cause of action who is proceeding in Pro Se status and moves the Court pursuant to 28 U.S.C. 2255 et seq.; 2255 and, for good cause would respectfully show the Court:

I.

JURISDICTIONAL STATEMENT

This court has jurisdiction over the instant cause of action pursuant to 28 U.S.C. 1291; 2253 and Fed.R.App.P. Rule 22(b). Since Appellant filed **both** a notice of appeal and a request for the issuance of a certificate of appealablility in the district court pursuant to the district court's dismissal of Appellant's 2255 on January 6, 1998, and the fact that it is well settled relative to the well established power of the Court of Appeal in granting expressed authority to district courts as compelling for district courts to retain the authority to issue certificates of appealability ("COAs") for 2255 petitions under the "AEDPA" **Else v. Johnson,** 104 F.3d at 83 (5th Cir. 1997), Appellant filed his request for the issuance of a COA in the distritct court along with his notice of appeal on January 20, 1998. On January 23, 1998 the district court entered its final order denying Appellant's request for a COA without referencing the record. Appellant's filing of his notice of

constituted a request to have all raised in his petition pursuant to C. section 2255 to be reviewed by ge of the Court of Appeals. of App.P.Rule 22(b): In re Certificate ability, 106 F.3d 1306 at 1307 (6th 997).

II.

PROCEDURAL FACTS

In furtherance fo Circuit Rule 2), the date of the judgment sought pellant to be reviewed by the Court district court's final Orders and nts entered on January 6, 1998 and y 23, 1998 respectfully.

III.

CERTIFICATE OF INTEREST

lease see Excerpt No. ''A'' hereto ed for al pertinent purposes.

IV.

STATEMENT OF THE CASE

Further, in accordance to Circuit 28(c) Appellant sets forth the ing:

(i) **COURSE OF PROCEEDINGS AND DISPOSTION IN THE DISTRICT COURT.**

On April 9, 1992, and Indictment was returned and filed in the United States District Court, For The Southern District of Indiana, Indianapolis Division. The Indictment consisted of Three (3) Counts. Count One: Violation of 21 U.S.C. 841 (a)(1) and 846, Conspiracy to possess with intent to distribute and to distribute cocaine, a Schedule II Narcotic Controlled Substance, in a quantity of five hundred (500) grams or more.; Count Two: Violation of 21 U.S.C. 841 (a)(1), Possession with intent to distribute approximately twenty two (22) ounces of cocaine, a Schedule II Narcotic Controlled Substance.; Count Three: Violation of 21 U.S.C. 841 (a)(1), Possession with intent to distribute approximately twenty two (22) ounces of cocaine, a Schedule II Narcotic Controlled Substance.

On March 24, 1993, a Superseding Indictment was filed in the same district court as that one Indictment filed on

Pursuant to a trial by jury, Appellant Chavis was found guilty on all four (4) Counts set forth in the Superseding Indictment and was sentenced on July 21, 1993 on the various four (4) counts relating to cocaine. The district court sentenced Appellant to an imprisoned term of 150 months on each Count 1, 2, 3, and 4 all to be served concurrent.

Appellant filed his notice of appeal timely but, pursuant to his counsel's advice, Appellant's counsel filed a Motion to Dismiss Appeal on or about December 31, 1993.

Subsequently, on or about February 22, 1994, Appellant Chavis filed his initial papers and documents relative to 28 U.S.C. 2255. Moreover, Appellant's counsel filed a motion to dismiss Appellant's 2255 upon the district court's recommendation for Appellant to complete his investigation in conjuction to his 2255 discovery investigation. The 2255 was dismissed without prejudice and the district court's recommendation to refile. The

government went along with the dismissal and the understanding that Appellant would refile upon his completion of his investigation into matters relative to his 2255.

As the record demonstrates, when Appellant attempted to refile his previously dismissed cause of action, the district court dismissed Appellant and Appellant filed his notice of appeal. The United States Court of Appeals For The Seventh Circuit reversed and remanded the case to the district court. Appellant filed his 28 U.S.C. 2255 in the district court and on January 6, 1998, the district court dismissed Appellant's 2255 citing that Appellant was timely barred pursuant to the one year time to file. Appellant filed his notice of appeal timely along with his request for a COA, the district court denied the Appellant's request for a COA. The instant appeal follows.

In view and consideration of the above that, a district court must deny the COA before a Petitioner can request one from the Court of Appeals **Rule 22(b)** and the fact Appellant

was denied, Appellant presents the instant pleading for the Court of Appeal's review and consideration. In furtherance of the instant pleading, Appellant incorporates herein by reference his "Request for Certificate of Appealability" and Bried in Support thereto and in so doing, Appellant prays onto the Court for the Court to enter its Order in conjunction to the filing of Appellant's COA and Brief in Support thereto. Appellant further prays onto the Court for adequate time to prepare his COA and Brief in Support thereto.

WHEREFORE ALL PREMISES considered, Appellant prays onto the Court to GRANT him permission to file his Request for Certificate of Appealability and Brief in Support thereto.

Respectfully submitted,

/s/

THIRL CHAVIS, PETITIONER,
Pro Se Reg.No.99019-012
FPC - Nellis CS 4500
N.Las Vegas,NV 89036

CERTIFICATE OF INTEREST

Appellate Court No. 98-1237

Short Caption: THIRL CHAVIS V. UNITED STATES OF AMERICA

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a certificate of interest stating the following information in compliance with Circuit Rule 26.1. NOTE: Counsel is required to complete the entire certificate and to use N/A for any information that is not applicable.

(1) The full name of every party or amicus the attorney represents in the case:

THIRL CHAVIS, PRO SE

(2) If such party or amicus is a corporation:

i) Its parent corporation, if any; and

N/A

ii) A list of stockholder which are publicly held

companies owning 10% or more of the stock in the party or amicus:

N/A

(3) The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court:

N/A

This certificate shall be filed with the appearance form or upon the filing of a motion in this court, whichever occurs first. The attorney furnishing the certificate must file an amended certificate to reflect any material changes in the required information. The text of the certificate (i.e. caption omitted) shall also be included in from of the table of contents to the party's main belief.

Attorney's Signature: APPELLANT CHAVIS IS PROCEEDING PRO SE

Date: MARCH 2, 1998

Attorney's Printed Name: THIRL CHAVIS, PRO SE

Address: FPC - NELLIS, CS 4500 N. LAS VEGAS

NV 89036-4500
Phone Number: Prison Camp Phone Number

Unkown to this Appellant.

CERTIFICATE OF SERVICE

I hereby certify that, U.S. Attorney For Southern District of Indiana was caused to be served at 46 E. Ohio St. Indianapolis, IN 46204 relative to the foregoing pleading hereto attached on this 2nd day of March, 1998, by depositing the same in the U.S. Mail postage prepaid.

/s/

Thirl Chavis, Pro Se

Reg. No. 99019-012

FPC-Nellis, CS 4500

North Las Vegas, NV

89036-4500

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
June 23, 1998

By the Court

THIRL CHAVIS Petitioner- Appellant,	)Appeal from the United)District Court for the)Southern District of)Indiana, Indianapolis
No.98-1237 v.	)Division.
UNITED STATES OF AMERICA Respondent- Appellee	)No. 97-C-1613

Larry J. McKinney, Judge

ORDER

Sections 105 and 106(b) of the Antiterrorism and Effective Death Penalty Act of 1996 prescribe requirements for second or successive collateral attacks on judgments in criminal cases. Among other things, the new law requires approval from the court of appeals before a second or successive petition may be filed in the District Court. The present case presents for our review the denial of a post-conviction motion under 28 U.S.C. section 2255.

Accordingly,

IT IS ORDERED that the appellee file, on or before June 29, 1998 a statement advising this court whether the appellant brought a previous post-conviction motion under 28 U.S.C. section 2255 challenging

challenges. If so, appellee shall provide the court with the district court docket number and a copy, if there is one, of the court's order authorizing the filing of a second or successive petition or motion.

If appellee takes the position that the current matter is successive, appellee shall file a copy of the district court order ruling on the either petition with its response.

NOTE: Caption document ''JURISDICTIONAL MEMORANDUM.'' The filing of a Circuit Rule 3(c) Docketing Statement does not satisfy your obligation under this order.

UNITED STATES DISTRICT COURT
Southern District of Indiana

Office of the Clerk

105 U.S. Courthouse GERALDINE T. CROCKETT

46 East Ohio Street CLERK

Indianapolis, IN 46204 317-226-6670

January 23, 1998

CAUSE NO:IP97-1613-C-M/F

JUDGE: Larry J. McKinney

Dear Appellant:

You filed a Notice of Appeal in the above case on 01-20-98.

The docketing statement required by Circuit Rule 3(c), which is attatched, of the U.S. Court of Appeals for the Seventh Circuit was not filed with the Notice of Appeal.

This is to notify you that pursuant to Circuit Rule 3(c), the appellant must serve on all parties docketing statement and file said statement with the Clerk of the Court of Appeals for the Seventh Circuit within seven (7) days of

the filing of the Notice of Appeal.

Do not attempt to file the docketing statement with this office after you have filed you Notice of Appeal. Docketing statements will only be accepted in the District Court when tendered with a Notice of Appeal. Docketing statements should be sent to the following address:

MR. THOMAS F. STRUBBE, CLERK

UNITED STATES COURT OF APPEALS

219 SOUTH DEARBORN STREET

CHICAGO, ILL 60604

GERALDINE T. CROCKETT

CLERK

BY: Greg Nahmens

(317) 226-5994

___ RECIEVED FOR APPELLANT

___MAILED TO APPELLANT

CIRCUIT RULE 3 Notice of appeal, docketing fee and docketing statement.

(a) Forwarding Copy of Notice of Appeal. When a notice of appeal to this court id filed with the clerk of the district court, the clerk shall promptly mail to the clerk of this court a copy of the notice of appeal together with a copy of the docketing statement. In civil cases. the Clerk of the district court shall include the judgments or orders under review, any transcribed oral statement of reasons, opinions, memorandum of decision, findings of fact and conclusions of law. The clerk of the district court shall also complete and include the Seventh Circuit Appeal Information Sheet in the form prescribed by this court.

(b) Dismissal of appeal for failure to pay docketing fee. If a proceeding is docketing without prepayment of the docketing fee, the appellant shall pay the fee within 14 days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(c)(1) Docketing statement. The appellant must serve on all parties a docketing statement file it with the clerk of the district court at the time of the filing of the notice of appeal or with the clerk of this court within seven days of filing the notice of appeal. The docketing statement must comply with the requirements of Circuit Rule 28(b). If there have been prior or related appellate proceedings in the case, or if the party believes that the earlier appellate proceedings are sufficiently

must identify these proceedings by caption and number. If any of the parties to the litigation appears in an official capacity, the statement must identify the current occupant of the office. The docketing statement in a collateral attack on a criminal conviction must identify the prisoner's current place of confinement and its current warden; if the prisoner has been released, the statement must decribe the nature of any ongoing custody (such as supervised release) and identify the custodian. If the docketing statement is not complete and correct, the appellee must provide a complete one to the court of appeals clerk within 14 days after the date of the filing of the appellant's docketing statement.

(2) Failure to file the docketing statement within 14 days of the filing of the notice of appeal will lead to the imposition of a $100 fine on counsel. Failure to file the statement within 28 days of the filing of the notice of appeal will be treated as abandonment of the appeal and the appeal will be dismissed. When the appeal is docketed the court will remind the litigants of these provisions.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
VS.)
)
Cause No. IP-92-59-CR-01-M/S
IP97-1613-C-M/F
THIRL CHAVIS,)
Defendant.)

ENTRY

The material filed by the defendant on January 20, 1998, shall be construed as both a notice of appeal and a request for the issuance of a certificate of appealability.

A certificate of appealability is a jurisdictional prerequisite to an unsuccessful habeas applicant appealing the denial of relief sought pursuant to 28 U.S.C. section 2255. 28 U.S.C. section 2253(c)(1)(B). "A certificate of appealability may issue...only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. section 2253(c)(2). For the reasons stated in connection with the denial of Mr. Chavis' motion for relief pursuant to 28 U.S.C. section 2255, the court does not find that he will be able to make "a substantial showing of the denial of a constitutional right." Accordingly, the defendant's request for the issuance of a certificate of appealability is denied.

The defendant is directed to pay the appellate fees of $105.00 within twenty (20) days.

IT IS SO ORDERED.

/S/
Larry J. McKinney,
Judge
United States Court

Copies to:

Melanie C. Conour
Office of the United States Attorney
United States Courthouse-5th Floor
46 East Ohio Street
Indianapolis, IN 46204

Thirl Chavis
Reg No. 99019-012
FPC - Nellis
CS 4500
N.Las Vegas, NV 89036-4500

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
Respondent,)
)
v.)
)
THIRL CHAVIS,)
Petitioner.)

Crim. No. IP-92-59-CR-01-M/S
Civ. Action No. IP-97-1613-C-M/F

APPLICATION/MOTION FOR CERTIFICATE OF APPEALABILITY AND/OR IN THE ALTERNATIVE "NOTICE OF APPEAL"

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Thirl Chavis Petitioner/Defendant ("Petitioner") in the above-entitled and numbered cause of action who is proceeding in Pro Se status and request the Court to hold the instant pleading to less stringent standards than those drafted by attorneys as stated in Haines v. Kerner, 404 U.S. 519; Cruz v. Beto, 405 U.S. 319.

In the aforementioned, Petitioner sets forth what has been determined in this country throughout the circuits relative to Certificates of Appealability ("COA").

In ccnsideration of a COA, it is well settled that district courts have power to issue certificates of appealability of denial of habeas corpus, 28 U.S.C.

section 2253 (C)(1); Fed. R. App.P. Rule 22(b); Muniz v. Johnson, 114 F.3d at 44 (5th Cir. 1997).

In further consideration of the well established power of the Court of Appeals, it granted expressed authority to district courts as compelling for district courts to retain the authority to issue certificates of appealability for section 2255 petitions under the "AEDPA" Else v. Johnson, 104 F.3d at 83 (5th Cir. 1997), the holding further addressed the standards of review contained in section 104 of the "AEDPA" which apply to pending habeas corpus petitions. See Drinkard, 97 F.3d at 764-66 (5th Cir. 1996).

In view, consideration and furtherance of the above mentioned expressed authority to district courts to issue COAs for section 2255 petitions under "AEDPA" Johnson, supra and also the holding in turning to the text of Fed.R.App.P. Rule 22(b), as amended by section 103 of the "AEDPA", it was restated that Rule 22(b) states:

"If an appeal is taken by the appellant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such certificate should not issue. The certificate or the statement shall be forwarded to the Court of Appeals with the notice of appeal and the file of the proceedings in the district court. If the district court judge denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge...."

It was also stated in part that, a district court must deny the COA before a petitioner can request one from the Court of Appeals. It was pursuant to the fact that, the rule contemplates that the district court will make the first judgment whether a COA should issue and on which issues, and that the circuit Court will be informed by the district court's determination in its own decisionmaking. **Muniz v. Johnson**, 114 F.3d at 45 (5th Cir. 1997)(citing **Cf.Lyons,** 105 F.3d at 1076 n. 18).

In view and in consideration of the above that the district court must deny the COA before Petitioner can request one from the Court of Appeals and the fact Petitioner's section 2255 was denied, Petitioner presents the instant pleading for the Court's review and consideration, moreover, on the facts and circumstances which led to the Court's conclusion. In the Court's analogy of section 105 provisions curiously enough, the Court in its "Entry Dismissing Motion For Relief and Directing Entry of Judgment" sets forth two exceptions that are clearly on target relative to Petitioner and the fact that, he is not time barred.

(1) The government's concealment of crucial evidence caused an impediment for Petitioner to making a colorable motion pursuant to section 2255. It was clearly demonstrated by the Court's dismissal without prejudice and suggestion to Petitioner to refile his documents and papers upon his completion of his investigation of the crucial evidence that tend to indicate the government's impediment through its concealment of

demonstrate Petitioner's innocense all of which the Court failed to reference in its above stated ''Entry Dismissing Motion For Relief and Directing Entry of Judgment.''

(2) Had the Court referenced the record in the case at bar, it would have found that, it was pursuant to Petitioner's due diligence that the case at bar was filed on June 13, 1997, all of which was pursuant to the Court's suggestion to Petitioner to file after his investigation was completed. For the two (2) facts listed herein above, Petitioner is clearly not time-barred moreover, the Court tends to indicate that its conclusion to dismiss Petitioner was in part in consideration of the Government's Motion To Dismiss, the same motion that Petitioner clearly demonstrated to the Court was improperly filed before the Court.

In furtherance of the instant pleading, Petitioner clearly styled the instant pleading in the alternative as **''Notice of Appeal''**. Moreover, Petitioner's filing of the instant **''Notice of Appeal''** constitutes a request to have all the issues raised in his petition pursuant to 28 U.S.C. section 2255 to be reviewed by a jusge of the Court of Appeals. **Fed.R.App.P.Rule 22(b); In re Certificates of Appealability,** 106 F.3d 1306 at 1307 (6th Cir. 1997). For the two exceptions above listed, the Court should find Petitioner is not time-barred therefore, the Court in the interest of justice should grant Petitioner this his application for Certificate of Appealability and, in the

Petitioner's Application for Certificate of Appealability then, Petitioner request that the instant pleading be considered as his **"Notice of Appeal"** on the Court's final Order and judgment denying Petitioner's 28 U.S.C. section 2255.

WHEREFORE ALL PREMISES considered, Petitioner prays onto the Court to GRANT this his **"Application/Motion For Certificate of Appealability"** for the reasons stated herein and in the interest of justice.

Respectfully submitted,

/S/

THIRL CHAVIS, PETITIONER
Reg.No. 99019-012
FPC- Nellis cs 4500
N.Las Vegas, NV 89036

10e

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been caused to be served upon the United States Attorney for the Southern District of Indiana on the 16th day of January, 1998, by depositing the same in the United States Mail postage prepaid.

/s/

Thirl Chavis, Pro Se

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA

vs. Cause No. IP 92-59-CR-01-M/S
IP97-1613-C-M/F

THIRL CHAVIS,

Defendant.

JUDGMENT

The court, having this day made its Entry,

IT IS THEREFORE ADJUDGED that the defendant take nothing by his motion for relief pursuant to 28 U.S.C. 2255 and this action is **dismissed without prejudice.**

/s/

LARRY J. MCKINNEY,
JUDGE

United States District Court

Date: 1/6/98
Copies to:

Melanie C. Conour
Office of the United States Attorney
United States Courthouse - 5th Floor
46 East Ohio Street
Indianapolis, IN 46204

Thirl Chavis
Reg. No. 99019-012
FPC - Nellis
CS 4500
North Las Vegas, NV 89036-4500

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISON

UNITED STATES OF AMERICA,

vs. Cause No. IP 92-59-CR-01-M/S

IP97-1613-C-M/F

THIRL CHAVIS,

Defendant.

ENTRY DISMISSING MOTION FOR RELIEF

AND DIRECTING ENTRY OF JUDGMENT

Defendant Chavis is serving the executre portion of a sentence imposed in this court on July 31, 1993, following his conviction of drug offenses after a trial by jury. Chavis filed an appeal, which was dismissed at Chavis' request on January 7, 1994. Chavis filed his first motion for relief pursuant to U.S.C. 2255 on February 22,1994, which was later dismissed without prejudice. Chavis filed this second motion for relief pursuant to 2255 on September 29, 1997. The United States seeks the dismissal of this action as time-barred, and Chavis has replied.

Whereupon the court, having considered Chavis' second motion for relief, the United States' motion to dismiss and Chavis' reply, and being duly advised, now finds that the motion to dismiss must be granted. This conclusion is compelled by the following facts and circumstances:

1. Section 105 of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides, in part, as follows:

> A 1-year period of limitations shall apply to a motion under this section [28 U.S.C. 2255]. The limitations period shall run from the latest of--
>
> (1) the date on which the judgment of conviction becomes final;
>
> (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
>
> (3) the date on which the right asserted was initially

recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligance.

Pub.L. No. 104-132, 105, 110 Stat. 1214, 1220 (codified at 28 U.S.C. 2255). The statute thus provides a one year limitation period in which claims under 2255 must be brought.

2. The pertinent times in the present action are not in dispute.

a. Chavis' direct appeal was dismissed on January 7, 1994.

b. Chavis' first 2255 action was dismissed without prejudice in January, 1995.

c. Chavis filed a request for permission to relief his 2255 motion was initially rejected

by this court as a successive motion of that nature, for which the necessary statutory precursors had not been followed, but this decision was vacated by an Order of the Court of Appeals issued on September 17, 1997, in No. 97-3118 and No. 97-9097.

3. According Chavis the benefit of the doubt in the materials which he has submitted, the earliest date his present claims could be construed as having been asserted was on June 13, 1997. See *United States v. Ortiz*, 1997 WL 214934 (E.D.Pa. April 28, 1997) ("mailbox rule" applied to 2255 motion subject to AEDPA).

4. The 1-year period of limitations in this case ran from the dismissal of Chavis' appeal on January 7, 1994. However, since the 1-year period of limitations in the AEDPA is a new provision, Chavis had one year from the effective date of the AEDPA in which to bring his action. *Lindh v. Murphy*, 96 F.3d 856, 866 (7th Cir. 1996) (AEDPA's time limit is "short enough that the 'reasonable

time' after April 24, 1996, and the one-year statutory period coalesce"), *rev'd on other grounds, Lindh v. Murphy,* 521 U.S. ___, 117 S. Ct. 2059 (1997). The 1-year anniversary of the AEDPA was April 24, 1997. Chavis' present action was not filed prior to that date, and hence Chavis' action was not timely brought and the merits of his motion cannot be reached. Chavis opposes this resolution of his motion only by averring that his claims are in fact meritorious and that the United States' motion to dismiss does not deserve to be granted. The first circumstance is irrelevant in light of the legislative determination that claims must be timely brought; and the second circumstance is only an expression of the defendant's state of denial that the statute of limitations argument by the United States is persuasive.

Based on the foregoing, the defendant's motion for relief pursuant to 28 U.S.C. 2255 is **denied.** This action is dismissed with prejudice and judgment consistent with this Entry shall now issure.

IT IS SO ORDERED

12e /s/

LARRY J. MCKINNEY,
Judge

United States District Court

Date: 1/6/98

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

RULE TO SHOW CAUSE

CIRCUIT RULE 3(c) DOCKETING STATEMENT

Date: February 19, 1998

By the Court:

No. 98-1237

THIRL CHAVIS,

Petitioner-Appellant

v.

UNITED STATES OF AMERICA,

Respondent-Appellee

TO: Thirl Chavis

NELLIS FEDERAL PRISON CAMP

Reg. No. 99019-012

Nellis A.F.B. - Area 2

North Las Vegas, NV 89036-4500

Appeal from the United States District
for the

Southern District of Indiana, Indianapolis Division

No. 97 C 1613, Larry J. McKinney, Judge

Circuit Rule 3(c) directs the appellant to file and serve a Docketing Statement, which meets the requirements of Circuit Rule 28(a), with the clerk of the District Court at the time of the filinf of the notice of appeal or with the clerk of this court within seven days of filing the notice of appeal.

Your Rule 3(c) Docketing Statement has not been filed to date. Accordingly,

IT IS ORDERED that the appellant file this overdue Docketing Statement with the clerk of this court within fourteen (14) days of the date of this order. Failure to do so will result in a one hundred dollar ($100.00) fine and/or dismissal od this appeal.

NOTE: Please caption document "CIRCUIT RULE 3(c) DOCKETING STATEMENT". The filing of a "Jurisdictional Memorandum" which may have been specifically ordered by the court does not satisfy your obligation under Circuit Rule 3(c).

cc: Judith A. Stewart [13b]

(1023-053195)

14 & 15

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,)
Respondent-Appellee)
)
vs.)
USCA NO. 97-9084
USDC NO. IP-94-398-C-M/F
92-59-CR-01
)
THIRL CHAVIS,)
Petitioner-Appellant.)

RENEWAL
APPLICATION AND/OR REQUEST UNDER 28 U.S.C SECTION 2244(b) FOR LEAVE TO FILE A SECOND OR SUCCESSIVE PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Thirl Chavis Petitioner-Appellant (''Petitioner'') in the above-entitled and numbered cause of action who is proceeding in Pro Se status and who is also, pursuant to the Court's Order dated July 24, 1997, files the instant renewal pleading in conformance to the Court's Circuit Rule 22.2 and for good cause would respectfully show the Court:

I.
CONSIDERATION IN SUPPORT OF APPLICATION/ REQUEST
(Restatement)

For Court to hold Petitioner's pleadings in accordance to Haines v. Kerner, 404 U.S. 519; Cruz v. Beto, 405 U.S. 319.

II.
STATEMENT OF THE CASE
(Restatement)

(i) COURSE OF PROCEEDINGS AND DISPOSITION IN THE TRIAL COURT.

On April 9, 1992, an Indictment was returned and filed in the United States District Court, for the Southern District of Indiana, Indianapolis Division. The Indictment consisted of three (3) Counts. Count One: Violation of 21 U.S.C. sections 841(a)(1) and 846, Conspiracy to possess with intent to distribute and to distribute cocaine, a Schedule II Narcotic Controlled Substance, in a quantity of five hundred (500) grams or more; Count Two: Violation of 21 U.S.C. Section 841 (a)(1), Possession with intent to distribute approximately twenty two (22) ounces of cocaine, a Schedule II Narcotic Controlled Substance; Count Three: Violation of 21 U.S.C. Section 841 (a)(1) Possession with the intent to distribute approximately twenty two (22) ounces of cocaine, a Schedule II Narcotic Controlled Substance.

On March 24, 1993, a Superseding Indictment was filed in the same Court as that one Indictment filed on April 9, 1992.

Pursuant to a trial by jury, Petitioner Chavis was found guilty of all four (4) Counts as set forth in the Superseding Indictment and was sentenced on July 21, 1993 on the various four (4) Counts relating to cocaine. The Court sentenced Petitioner to a imprisoned term of 150 months on each Count 1, 2, 3, and 4 all to be served concurrent.

Petitioner filed his notice of appeal timely but, pursuant to his counsel's advise, Petitioner's counsel filed a Motion To Dismiss Appeal on or about December 31, 1993.

Subsequently, on or about February 22, 1994, Petitioner filed his initial petition pursuant to 28 U.S.C. section 2255, and subsequently Petitioner's counsel filed a motion to dismiss Petitioner's section 2255 without prejudice.

Pursuant to Petitioner's motion to dismiss his section 2255 and the reasons set forth in said motion, Petitioner filed his "Defendant's Motion Requesting Permission To Refile His Motion Under 28 U.S.C. section 2255 To Vacate, Set Aside, or Correct Sentence By a Person In

go over to state court

Q. But many times because of some odd laws, you have a lot more leeway in sentencing people over there; isn't that right?

A. When this charge was filed, and based on the amount of product I got that day, taking it to state court was alot more severe than taking it to the federal.

Q. The severity of what Kay Siakotos was charged with was short of murder in a state court? The most serios offense you can be charged with is a Class A Felony.

A. I don't know that sir. I am not that familiar with those laws now. 15 years ago I would have been able to tell you that.

Q. You understand that an A felony which you charged her with carried 20 to 50 years?

A. Yes, sir.

Q. And you charged her with two of those?

A. Yes, sir.

Q. So she was facing a possible hundred year sentence?

A. No, sir. Based on my expierence, I have never seen anybody, never seen a judge stack time on somebody with Class A felonies.

Now, if we are going to be realistic about it, if she would have pled guilty or gone to trial, the maximum amount of time she would have got was 20 years.

Q. So in your idea if she would have gone to trial at all, she would have got was 20 Years?

A. Yes.

Q. You don't have that sort of leeway over here: the judges have very little leeway in the way of sentencing; isn't that correct?

A. Based on the amount of dope that I was able to get off of Kay Siakotos, if she would have come over here and I would have charged her over here, she had a chance of walking out of here with probation. In federa court. Without even cooperating. Because of the guide lines.

Q. Isn't it true that with a 20 year sentence where she was obviously dealing, you allow her to plead guilty to not dealing but possession; isn't that correct?

A. She was charged with possession also, yes.

Q. So we plead her to possession, she gets six years, which you have been around long enough to know that the state system, unlike the federal syaytem, you do one-half of your time?

A. Well, that is not correct.

Q. You get two days credit for every day you serve?

A. That is not correct. On a six year sentence, yes.

Q. You serve three years.

A. Only if you are good.

Q. If you are good you serve three years; is that correct?

A. Exactly. You must be good to get those three years.

Q. And taking it the long way around the barn and say that neither Phil Fogel nor Kay Siakotos today were in prison, they are in alternative placements of the system?

QUESTIONS BY MR. TEKOLSTE:

Q. Just a few matters for clarification.

I believe you stated that you knew that Kay Siakotos got the cocaine that was delivered to Jesse Abner on June 26th 1989 from Thirl Chavis. In fact, you don't know that, do you?

A. Just what Jesse and Kay told me. I did not see Mr. Chavis hand Kay Siakotos that.

Q. You didn't see that? You have been told numerous things about that; is that correct?

A. I have been told by Jesse Abner and Kay Siakotos, yes, sir.

Q. And Kay Siakotos apparently told Jesse Abner something else?

A. No, that is not correct.

Q. That is what Jesse Abner had to say?

A. That is the way he remembers it.

Q. Isn't it true that the standard for arrest is a little different than the standard for conviction? The legal standard?

A. Yes, sir.

Q. The standard for arrest is probable cause?

A. Probable cause, yes, sir.

Q. The standard for conviction is beyond a reasonable doubt?

A. Yes, sir.

Q. You also said that Kay Siakotos had nothing to gain by testifying. That is not true, is it?

A. Yes, sir, it is true.

Q. She had a plea agreement entered that as a condition of that

plea agreement required her to testify in federal court if necessary?

A. If necessary.

Q. And it became necessary, did it not?

A. Yes, sir, it did.

Q. And in fact that plea agreement, if she refused to testify, would have been null and void?

A. It could have been, yes, sir.

Q. So she did have something to gain?

A. No, sir. her deal was already cut.

Q. Well, either--

A. If this did not--

Q. Well, either a deal can be undone ot it can't be undone. I thought you just said it could be undone?

A. It could be undone, yes, sir.

MR. TELOLSTE: That is all I have, your honor.

THE COURT: Mr. Bookwalter.

QUESTIONS BY MR. BOOKWALTER:

Q. Special Agent Casey, Kay Siakotos isn't at the Women's Prison, is she?

A. No, sir, she is not.

Q. How old is she?

A. 33

Q. She is out on Girls School Road at the Indiana Girls School?
A. She is at the Indiana Girls School.

A. It means you are put back in jail upon a hearing to find out if you in fact violated your probation. I was violated because I got the cocaine charge.

Q. Are you familiar with Special Agent Tom Casey?

A. Yes, I am

Q. Was he responsible in part for the investigation resulting in your cocaine conviction?

A. Yes, he was.

Q. Are you also serving a forgery sentence now?

A. Right now the executed time I am serving is the cocaine case. The last eight months of my sentence is the remainder of my violation time.

Q. Is that because one sentence follows the other?

A. Because they are consecutive.

Q. As a result of your arrest for the cocaine case. did you enter into a plea agreement with the state of Indiana?

A. Yes, I did.

Q. Let me hand you what has been marked for identification purposes as Government

Exhibit Number 16, and ask you to take a look at that particular document and tell us whether or not it bears your signature.

A. Yes, it does.

Q. What is that document?

A. That was the plea agreement I signed in reference to my possession of cocaine case.

Q. And does it require you to cooperate with law enforcement officers?
A. It says I will testify truthfully in a federal case.
Q. Is that why you are here?
A. That is why I am here.
Q. What happens if you do not live up to that particular agreement in front of you?
A. The state can technically revoke my plea bargain, sentence me to more time.
Q. And what happens if you fail to testify truthfully?
A. I believe the same: they can revoke it.
Q. Are you also subject to charge of perjury?
A. Yes.

MS. CONOUR: The government moves to admit Government Exhibit Number 16.

MR. TEKOLSTE: No objection

MR. BOOKWALTER: No objection.

THE COURT: The exhibit is admitted.

(Government Exhibit 16 admitted in evidence)